

# Exhibit 1

Volume I  
Pages 1 to 102  
Exhibits None

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

SUSANNA MIRKIN and BORIS :  
MIRKIN, Individually and on :  
Behalf of All Others :  
Similarly Situated, : Civil Action  
Plaintiffs, : No. 18 Civ. 2949  
: (ARR) (RER)

VS. :

XOOM ENERGY, LLC; and XOOM ENERGY NEW YORK, LLC, Defendants. :  
:

VIDEOTAPED DEPOSITION OF DERYA ERYILMAZ,  
Ph.D., a witness called by the Defendant, taken  
pursuant to the Federal Rules of Civil Procedure,  
before Alexander K. Loos, Registered Diplomate  
Reporter and Notary Public in and for the  
Commonwealth of Massachusetts, at the Offices of  
Veritext Legal Solutions, 101 Arch Street, Suite  
650, Boston, Massachusetts, on Tuesday, November 15,  
2022, commencing at 10:25 a.m.

### PRESENT:

Wittels McInturff Palikovic  
(By Steven L. Wittels, Esq.; Steven D. Cohen, Esq. (Via videoconference); and Ethan D. Roman, Esq. (Via videoconference))  
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Armonk, NY 10504  
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for the Plaintiffs.

1           Q.    Okay.  Are you offering any personal  
2       interpretation of how the pricing terms of the sales  
3       agreement -- let me rephrase it.

4                   You're not offering a legal interpretation  
5       of the sales agreement, right?

6           A.    No.

7           Q.    Okay.  Are you offering any opinion about  
8       how the pricing terms of the sales agreement should  
9       be interpreted?

10          A.    I guess as an energy economist, this -- you  
11       know, there are terms in the -- in this contract  
12       that only people who work a long time in the energy  
13       industry -- like actual and estimated supply costs,  
14       for example, is an industry-specific term.

15                   So I am reading this as the contract says.  
16       You know, based on actual and estimated supply  
17       costs.

18                   So my interpretation of that is the rates  
19       should be according to this language.  And I guess I  
20       know what it means to be looking at the supply cost,  
21       and that's what I'm understanding.

22          Q.    Okay.  Are you offering an opinion about  
23       what "based on" XOOM's actual and estimated supply  
24       costs means?

1           A. I mean, "based on" means -- "based on  
2       actual and estimated supply costs" means very -- I  
3       mean to me, very close to -- the rate should be very  
4       close to XOOM's actual and estimated supply costs.

5           Q. Okay. And what is that opinion based on?

6           A. That is based on the contract language that  
7       has, you know, "actual and estimated supply costs."

8           And "supply costs" are very specific  
9       technical terms in the industry. So by reading  
10      this, the XOOM's rates should be very close to the  
11      supply costs of -- supply costs that XOOM  
12      calculates.

13           Q. So to you, "based on" means very close to?

14           A. Very close to. At the -- yeah. At the  
15      minimum, very close to, yeah.

16           Q. Does it -- it doesn't mean equal to?

17           A. Very close to. It may mean equal to, or  
18      virtually -- virtually equal.

19           Q. What does "virtually equal" mean?

20           A. Very close to, I would say. It should be  
21      very close to XOOM's actual and estimated supply  
22      costs.

23           Q. Do you think this is a cost pass-through  
24      contract?

1 Q. Uh-huh.

2 A. Then we came up with an alternative method  
3 to show what the overcharges would look like if  
4 there was a margin considered.

5 Q. Uh-huh.

6 A. So that's the approach that we presented in  
7 method two.

8 Q. Uh-huh.

9 But you believe, looking back at Exhibit 2,  
10 the contract terms --

11 A. Yes.

12 Q. -- that an average customer would read the  
13 pricing provision that's listed in the box at the  
14 top of the document?

15 A. Uh-huh.

16 \*Q. And would conclude that they are going to  
17 get electricity from XOOM at cost?

18 MR. WITTELS: Can you repeat the question?

19 Read back the question, please.

20 \*(Record read)

21 MR. WITTELS: Objection.

22 THE WITNESS: Well, the customer will get  
23 this agreement; and they would read that it would be  
24 based on XOOM's actual and estimated supply costs,

1 and they would assume it would be based on actual  
2 and estimated supply costs.

3                   But an average customer wouldn't know what  
4 a "supply cost" means, but it's an  
5 energy-industry-specific terminology. So that's  
6 what they -- from what they read, they would think  
7 that they would be based on actual and estimated  
8 supply costs, and they would -- that's what they  
9 would be charged at.

10                  BY MR. MATTHEWS:

11                  Q. And you think an average customer -- I'm  
12 focused on the phrase "based on" -- would think that  
13 "based on" means equal to?

14                  MR. WITTELS: Objection. It's about ten  
15 times you've asked it.

16                  THE WITNESS: As I mentioned before, I  
17 think "based on" in this context is we are having a  
18 cost, converting into a rate, so it should be very  
19 close to -- to the -- to the actual and estimated  
20 supply costs.

21                  BY MR. MATTHEWS:

22                  Q. Converting it directly into a rate --

23                  A. Rate.

24                  Q. -- with no margin added, correct?

1           A. Yes. No margin, because it's not listed in  
2 this.

3           Q. You think that's what an average customer  
4 would believe reading that language?

5           A. In this context, in this contract, they  
6 would read this and think that it would be based on  
7 actual and estimated supply costs.

8           MR. WITTELS: Why are you laughing? You  
9 can go to the court and laugh, too. I don't think  
10 you should be laughing at witnesses.

11           MR. MATTHEWS: If this is the opinion that  
12 they want to present in this case that "based on"  
13 means equal to, they should say so. I don't know  
14 why that's difficult if that is the opinion that  
15 they're advancing.

16           MR. WITTELS: I think she's asked it --  
17 answered your questions appropriately, and I don't  
18 know why you're laughing. But we'll see what the  
19 court thinks.

20           BY MR. MATTHEWS:

21           Q. Dr. Eryilmaz, you believe that an average  
22 customer would read that language "based on actual  
23 and estimated supply costs" and would believe that  
24 XOOM's rate would be a direct conversion of its

1       actual and estimated supply costs into a rate with  
2       no margin added on top, correct?

3                    MR. WITTELS: Objection.

4                    THE WITNESS: An average customer would  
5        read this agreement, and they would say, "My" -- I  
6        mean, "I will be charged at actual and estimated  
7        supply cost." That an average -- as I mentioned,  
8        "supply cost" is a very specific energy industry  
9        terminology, so an average customer may not be able  
10       to interpret what the components of "supply cost"  
11       is, and that is why, you know, I think, you know, an  
12       average customer would just read it and say they  
13       will be charged at actual and estimated supply cost  
14       based on just reading that.

15                  But they would be able to understand  
16        comprehensively what an actual and estimated supply  
17        cost mean? Probably not, because the average  
18        customer, or like a lay person, wouldn't know what  
19        it means. Only energy industry experienced people  
20        can interpret that, in my opinion.

21                  BY MR. MATTHEWS:

22                  Q. Do you think an average customer knows what  
23        "based on" means?

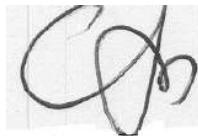
24                  A. I mean in ordinary language, it may mean a

1 COMMONWEALTH OF MASSACHUSETTS)

2 SUFFOLK, SS. )

3 I, Alexander K. Loos, RDR and Notary Public in  
4 and for the Commonwealth of Massachusetts, do hereby  
5 certify that there came before me on the 15th day of  
6 November, 2022, at 10:25 a.m., the person  
7 hereinbefore named, who was by me duly sworn to  
8 testify to the truth and nothing but the truth of  
9 her knowledge touching and concerning the matters in  
10 controversy in this cause; that she was thereupon  
11 examined upon her oath, and her examination reduced  
12 to typewriting under my direction; and that the  
13 deposition is a true record of the testimony given  
14 by the witness. I further certify that I am neither  
15 attorney or counsel for, nor related to or employed  
16 by, any attorney or counsel employed by the parties  
17 hereto or financially interested in the action.

18 In witness whereof, I have hereunto set my hand  
19 and affixed my notarial seal this 27th day of  
20 November, 2022.

21   
22

23 Notary Public

24 Commission expires 5/5/28